

Directive #: W2FOD-02

To: work2future Service Providers

From: San Jose Silicon Valley Workforce Development Board

Effective Date: July 1, 2015 Rev. 2018

SUBJECT: Adult and Dislocated Program Eligibility Determination

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OPERATIONAL DIRECTIVE

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General Eligibility

To be eligible to receive WIOA services in the Adult and Dislocated Worker Program, an individual must:

1. Be 18 years of age or older;
2. Be a citizen or noncitizen authorized to work in the US; and

Eligible to Work—Section 9601.5 of the California Unemployment Insurance Code requires that “each state or local government agency or community action agency, or any private organization contracting with a state or local government agency, that provides employment services, including, but not limited to, job training, retraining, or placement, shall verify an individual's legal status or authorization to work prior to providing services to that individual in accordance with procedures established under federal law.”

The documentation of an individual’s employability (right-to-work) must be conducted in compliance with Title 8 CFR Section 274a.2 which states the federal requirements and procedures persons or entities must comply with when hiring, or when recruiting or referring for a fee, or when continuing to employ individuals in the United States. These requirements and procedures are published as the [U.S. Citizenship and Immigration Services \(USCIS\) Form I-9](#), and take precedence over any State statute and regulation governing alien status determination.

3. Meet Military Selective Service registration requirements (males only).
 - WIOA requires males to comply with Selective Service registration requirements prior to participation in WIOA funded programs.
 - Local areas must ensure that each applicable male that participates in any local program or activity established under WIOA, or receives any assistance or benefit under WIOA, has not knowingly and willfully failed to register. (see below)
 - Males born on or after January 1, 1960, and at least 18 years of age, who are not in the armed services on active duty, must be registered for the Selective Service. A youth who becomes 18 years of age

while participating in a WIOA program must register within 30 days of his 18th birthday. If a youth fails to register within 30 days of his 18th birthdate, WIOA-funded service will discontinue.

- Occasionally, males who were subject to Selective Service registration, but did not register and are now beyond their 26th birth date, apply for assistance from the WIOA program.
- The MSSA requires that services must be denied to a male applicant 26 years or older, if it is determined that he knowingly and willfully failed to register. However, when it can be determined that the applicant did not knowingly or willfully fail to register, he can be considered for participation.

Priority of Service

Priority of service must be given to recipients of public assistance, other low-income individuals, or individuals who are basic skills deficient. with respect to individualized career services and training services funded with WIOA adult funds. Priority of service status is established at the time of eligibility determination and does not change during the period of participation. Priority does not apply to the dislocated worker population. Veterans and eligible spouses continue to receive priority of service among all eligible individuals; however, they must meet the WIOA adult program eligibility criteria. When programs are statutorily required to provide priority, such as the WIOA adult program, then priority must be provided in the following order:

1. Veterans and eligible spouses who are also recipients of public assistance, other low-income individuals, or individuals who are basic skills deficient.
2. Individuals who are the recipient of public assistance, other low-income individuals, or individuals who are basic skills deficient.
3. Veterans and eligible spouses who are not included in WIOA's priority groups.
4. Other individuals not included in WIOA's priority groups.

Additional Eligibility Requirement for Dislocated Workers

In addition to complying with general eligibility, an individual must meet any one of the five following criteria to be eligible to receive dislocated worker services under Title I of WIOA.

An eligible dislocated worker remains eligible for assistance after dislocation as long as the individual has not been employed in a job since dislocation and prior to application that paid a wage defined by the local board as a self-sufficient dislocated worker wage or leading to self-sufficiency or providing more than stopgap employment.

Stop-gap employment means work an individual does only because he has lost the customary work for which his training, experience or work history qualifies him/her.

1. Employment would be considered "stop-gap" if the salary were substantially below the salary of the individual's primary occupation and/or if he/she is working substantially under the skill level of his customary occupation. There may be times when stopgap employment provides a self-sufficient wage,

e.g., contract employment or employment obtained through a temporary employment services agency. Such employment would not change the individual's dislocated worker status.

2. The determination about whether or not an individual's employment since dislocation is stopgap employment must be made on a case by case basis and take into consideration an individual's personal, family, financial, and employment situation.
3. An individual employed in stop-gap employment upon enrollment should be recorded as employed in the employment status field. The participant file must contain appropriate documentation showing why the stop-gap employment qualifies the individual for the dislocated worker program.

Once an individual is registered as a dislocated worker, the individual remains a dislocated worker until exited from the program regardless of employment status or earnings. If a participant becomes employed in a full time, permanent job that pays a wage defined by the local board as self-sufficient or leading to self-sufficiency, the participant may continue to be served in the program until he/she is formally exited from the program.

Dislocated Worker Determination: There are five methods for determining dislocated worker eligibility.

The individual:

1. Has been terminated or laid off, or who has received a notice of termination or layoff, from employment;

AND

Is eligible for or has exhausted entitlement to unemployment compensation;

OR

Has been employed for a duration sufficient to demonstrate attachment to the workforce, but is not eligible for unemployment compensation due to insufficient earnings or having performed services for an employer that were not covered under a State unemployment compensation law;

Sufficient attachment to the workforce shall be defined as: Full or part time employment within the last three years prior to the date of the WIOA Application. Part time employment conditions that, by their nature or design, restrict the numbers of hours available for work in any day are acceptable in determining sufficient attachment to the workforce. Examples include, but are not limited to school aides, babysitters, domestics, etc.,

AND

2. Is unlikely to return to a previous industry or occupation;

'unlikely to return to previous occupation' shall be defined as: An individual who at the time of application is determined to have one or more of the following barriers to returning to previous occupation:

- age 50+

- offender
 - limited English
 - HS Drop out
 - substance abuse
 - disability/health
 - basic skills deficient
 - long-term unemployed (defined as 13 of last 26 weeks)
 - insufficient education for job
 - obsolete/inadequate job skills
 - limited availability of occupation
 - declining industry
 - significant wage variable for self-sufficiency (defined as salaries of like positions posted at 20% less than previous position)
 - other barriers defined or determined by WIOA Case Manager and approved by work2future WDB staff.
3. Has been terminated or laid off, or has received a notice of termination or layoff, from employment as a result of any permanent closure of, or any substantial layoff at, a plant, facility, or enterprise;

Substantial layoff at a plant, facility, or enterprise shall be defined as:

- Any temporary or permanent reduction in workforce by 10% of employees by department, unit or total company, but not necessarily resulting in permanent closure
- Is employed at a facility at which the employer has made a general announcement that such facility will close within 180 days; or for purposes of eligibility to receive services other than training services described in WIOA Section 134(d)(4), intensive services described in Section 134(d)(3), or supportive services, is employed at a facility at which the employer has made a general announcement that such facility will close;

General announcement shall be defined as: A recognized media or public notice (newspaper article, internet posting, etc) documenting an employer's intent to close.

4. Was self-employed (including employment as a farmer, a rancher, or a fisherman) but is unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters;

General economic conditions shall be defined as a:

- Decline in local economy
- Decline in occupational demand in which the self-employed person generated his/her historical revenue
- Closure/RIF of supplier or consumer occurred
- Natural or Catastrophic Disaster occurred

5. Is a displaced homemaker - The term “displaced homemaker” means an individual who has been providing unpaid services to family members in the home **AND**:
- Has been dependent on the income of another family member but is no longer supported by that income; **OR**
 - Is the dependent spouse of a member of the Armed Forces on active duty and whose family income is significantly reduced because of a deployment (as defined in section 991(b) of title 10, United States Code, or a call or order to active duty a permanent change of station, or the service-connected or death or disability of the member; **AND**
 - Is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment; **AND**
 - Is the spouse of a member of the Armed Forces on active duty and who has experienced a loss of employment as a direct result of relocation to accommodate a permanent change in duty station of such member; **OR**
 - Is the spouse of a member of the Armed Forces on active duty and is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

WIOA funds will be used for individualized career services, training services and support services for workers: (1) as soon as they have layoff notices; or (2) 180 days before layoff if employed at a facility that has made a general announcement that it will close within 180 days.

Farmworkers and the Unlikely to Return Standard

The inherently seasonal nature of farmworker qualifies under the “unlikely to return to work” standard if individuals that may have worked seasonally can be considered unlikely to return to work in a previous industry or occupation for a variety of reasons such as:

1. Change in family situation that requires higher income;
2. Disability that precludes returning to the same occupation;
3. Natural disaster that results in lost wages;
4. Loss of agricultural land;
5. Mechanization; or
6. Any significant variance to normal seasonal employment patterns, resulting in uncertain return-to-work dates.

Additionally, permanent closures or a substantial layoff from agricultural enterprises and facilities such as packaging, canneries, or farming are not excluded from the standard under WIOA, including those that were self-employed (including employment as a farmer, a rancher, or a fisherman) and are unemployed due to economic conditions that resulted from extreme or unusual weather patterns and agricultural market downturns can also apply to farmworkers.

Layoffs, Furloughs, Temporary Layoffs and Lockouts

Layoff means the permanent or temporary termination of employment of an employee because a position has been abolished, because of insufficient funds, because of lack of work, or for any other reason not reflecting discredit on the employee (such as, dismissal for inadequate performance, violation of workplace rules, cause, etc.). Individuals that are laid off must meet the dislocated worker requirements as illustrated above.

Furlough means the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other non-disciplinary reasons [Title 5 United States Code (USC) 7511(a)(5)]. As such, it is a temporary termination of employment or temporary layoff. Individuals that are laid off must meet the dislocated worker requirements as illustrated above.

Lockout means any refusal by an employer to permit any group of five or more employees to work as a result of a dispute with such employees affecting wages, hours or other terms or conditions of employment of such employees. A lockout does not terminate the employer-employee relationship. Consequently, locked out employees are not eligible dislocated workers since they have not been terminated or laid off, are not eligible for unemployment compensation, and are likely to return to the same industry or occupation once the dispute is resolved. The same guidance applies to employees that are on strike. There may be locked out employees who for financial reasons seek other employment. These individuals may be served as adults.

There must be reasonable efforts made to document eligibility for WIOA-funded programs. However, the use of self-attestation is allowable to document those items that are not verifiable or are readily available. **The applicant's difficulty in obtaining documentation does not need to entail undue hardship to justify using an applicant's self-attestation.**

Note: In taking an applicant's self-attestation, it is NOT necessary to obtain corroboration unless there is reason not to believe the applicant. If a self-attestation is used, WIOA-staff must note attempts made to collect information which were exhausted prior to the need for a self-attestation.

SELF ATTESTATION – When a participant states his or her status for a particular data element, such as low income or homeless status, and then signs and dates a form acknowledging this status. The key elements for self-attestation are: a) the participant identifying his or her status for permitted elements; and b) signing and dating a form attesting to this self-identification. The completed self-attestation form with signature remains part of the eligibility verification and must be filed in the participant's MIS file. Note that, self-attestation is not to be used as the primary method of gathering documentation to verify data elements. Self-attestation as a documentation source is only to be used when the preferred options of paper documentation or third-party corroboration are not available.